

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

TRICO INDUSTRIES, INC.,

Respondent.

**Docket No. FMCSA-2008-0206¹
(Midwestern Service Center)**

ORDER DISMISSING PROCEEDING AND CLOSING DOCKET

On September 17, 2009, the Field Administrator for the Federal Motor Carrier Safety Administration's Midwestern Service Center (Claimant) submitted a Notice of Settlement and Motion to Close the Docket. Claimant and Respondent entered into a Settlement Agreement which resolves the matters at issue here.

Under the Settlement Agreement, which was executed on July 3, 2008, and adopted as a Final Order,² Respondent agreed to pay \$1,650 in six consecutive monthly installment payments, with \$1,100 of the original civil penalty amount being suspended, conditioned upon: (1) Respondent not receiving any critical or acute violations in 49 CFR Parts 382 during any compliance review within 2 years from the execution of the Agreement,³ and (2) Respondent paying the non-suspended portion of the civil penalty in accordance with the terms of the Agreement.⁴

¹ The prior case number of this matter was MO-2008-0095-MO0702.

² Settlement Agreement, paragraph 10. There was no explanation offered for the 14-month delay in submitting the agreement for approval.

³ Settlement Agreement, paragraph 5.

⁴ The Notice of Claim originally proposed a civil penalty of \$2,750.

The second and third sentences of paragraph 10 of the Settlement Agreement state that: "Failure to pay in accordance with the terms of this Agreement will result in the loss of any reductions in penalties for all valid claims, and the full amount of \$2,750 will be immediately due and payable (less any payments made). Thus, if payment is not received by the due date, the payment plan set out above will be void, and the FMCSA will take steps to immediately collect \$2,750, less any payment made by Respondent." (Emphasis supplied.) We recently held that such language was impermissible because it did not comply with 49 CFR 386.22(a)(1)(vi) and that the two quoted sentences were void.⁵ However, paragraph 14 of the Agreement provides that if any provision of the Agreement is held invalid or illegal, the Agreement shall be construed as if it did not contain the invalid or illegal provision.

Notwithstanding the invalidity of the second and third sentences of paragraph 10, Respondent's payment obligation expired on December 15, 2008, more than nine months ago. There is no indication that it has not complied with this obligation. However, pursuant to our decision in *Golden Eagle Transit*, Claimant will not be able to seek reinstatement of the suspended amount of the original civil penalty if Respondent does not satisfactorily comply with 49 CFR Part 382, as provided in paragraph 5 of the Agreement. Nevertheless, I conclude that the settlement without the two sentences

⁵ See *In the Matter of Golden Eagle Transit, Inc.*, Docket No. FMCSA-2009-0044, Final Agency Order: Order on Reconsideration, July 10, 2009. The regulation requires the settlement agreement to provide that failure to pay may result in the loss of any reductions in penalties.

declared void in *Golden Eagle Transit* is in the public interest, and, accordingly, it is accepted.⁶

THEREFORE, *It Is Hereby Ordered*, the Settlement Agreement is the Final Order in this matter, the proceeding is dismissed, and the docket is closed.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration



Date

⁶ See 49 CFR 386.22.

CERTIFICATE OF SERVICE

This is to certify that on this 2 day of OCTOBER, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Travis E. Elliott, Esq.
Ellis, Ellis, Hammons & Johnson, P.C.
The Hammons Tower
901 St. Louis Street, Suite 600
Springfield, MO 65806-2405

One Copy
U.S. Mail

Peter W. Snyder, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461

One Copy
U.S. Mail

Darin G. Jones, Field Administrator
Midwestern Service Center
Federal Motor Carrier Safety Administration
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461

One Copy
U.S. Mail

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE
Room W12-140
Washington, DC 20590

Original
Personal Delivery

A handwritten signature in blue ink, reading "Janice Miller", is written over a horizontal line.